



Texas Department of Health

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OPEN RECORDS DIVISION

The Honorable Dan Morales
Attorney General of Texas
P. O. Box 12548
Austin, Texas 78711

Re: Reconsideration and Clarification of Letter Opinion No. 96-103
(I.D. #38920)

ML-39682-97

Dear General Morales:

39682

This letter is to request reconsideration and clarification of Letter Opinion No. 96-103, issued by your office on September 23, 1996, which determined that the Texas Department of Health did not have the authority to register kinesiotherapists pursuant to Section 12.014(a) of the Health and Safety Code, which allows the Texas Department of Health to establish registries for providers of health-related services who are not otherwise licensed, registered, or certified by any state agency, board, or commission. Your office determined that kinesiotherapists are regulated by the Board of Physical Therapy Examiners. An additional issue has been raised regarding federal preemption, and your office has indicated that it would be willing to reconsider the above-referenced Opinion on this question. The specific questions are:

1. Whether it was the intent of the United States Congress to preempt state laws conflicting with 38 U.S.C. 7402;
2. Whether any portion of the Texas Revised Civil Statutes Annotated Article 4512(e) conflicts with and/or impairs the federal scheme as established under 38 U.S.C. 7402 and is, therefore, preempted and invalid to the extent of such conflict or impairment;
3. Whether that specific portion of the Texas Revised Civil Statute Annotated Article 4512(e), which touches upon the regulation of kinesiotherapy in the State of Texas, is invalid in its application to federally employed kinesiotherapists because it conflicts with and/or impairs the federal scheme as established under 38 U.S.C. 7402;

4. Assuming that the answer to question no.3 above is in the affirmative, whether Texas Revised Civil Statutes Annotated Article 4512(e), therefore, fails to regulate the practice of kinesiotherapy in its entirety within the state of Texas; and
5. Assuming that the answer to questions no.3 and 4 above are in the affirmative, whether those kinesiotherapists who are practicing within the State of Texas, and who are not subject to regulation under the Act, may be placed on the Texas Department of Health registry for providers of health-related services pursuant to Section 12.014 of the Texas Health and Safety Code.

Also, please find attached a brief prepared by Mr.Scott M. Anderson, Attorney, who represents the Texas Kinesiotherapy Association and the American Kinesiotherapy Association.

If you require any additional information from the Texas Board of Physical Therapy Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701; the Texas Association of Physical Therapists, 400 West 15th Street, Suite 805, Austin, Texas 78701; the Texas Association of Kinesiotherapists, 384 Treeline Park, #511, San Antonio, Texas 78209; or The American Kinesiotherapy Association, P. O. Box 614, Wheeling, Illinois 60090, please contact them directly.

Should you have questions, please contact JoAnn Duda, Attorney, Office of General Counsel at 458-7236.

Sincerely,



Patti J. Patterson, M.D.
Commissioner of Health

cc: Scott M. Anderson, Attorney
Texas Board of Physical Therapy Examiners
Texas Association of Physical Therapists
Texas Association of Kinesiotherapists
The American Kinesiotherapy Association